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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,866	02/22/2002	Mark E. Kelly	MSC-23309-1	8743

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NASA JOHNSON SPACE CENTER
MAIL CODE HA
2101 NASA RD 1
HOUSTON, TX 77058

EXAMINER

MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,866

Applicant(s)

KELLY ET AL.

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-57 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 10-33 and 43-57 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. In claims 10-33 and 43-57, the Applicant is required to clarify to what the claim is intended to be drawn to, i.e., either the apparatus alone or the combination of the apparatus and the air mask. The Applicant sets forth the combination of the apparatus and the air mask when describing the structure associated with the breathing mask, which is inconsistent with preamble, that sets forth the subcombination of the apparatus. Applicant is required to make the language of the claims consistent with the intent of the claims. It should also be noted that in considering the claims on the merits, the Examiner will consider the claims as drawn to the combination.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
5. Claims 1-5, 26-29, 34-38, 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Cramer et al. 4109509.

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6. Cramer et al. teaches a method/apparatus for monitoring an oxygen partial pressure in an air mask of an oxygen system, comprising: generating a signal corresponding to the oxygen partial pressure in the air mask, the signal generated independently of the oxygen system; comparing the generated signal with a reference signal corresponding to a desired oxygen partial pressure; and vibrating a portion of the air mask if the generated signal is determined to be lower than the reference signal; detecting the oxygen partial pressure in the air mask; sounding an alarm if the generated signal is determined to be lower than the reference signal; amplifying the generated signal (col. 3, lines 31-41); and selectively shutting off the generated signal (col. 2, lines 25-27).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 13 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cramer et al.

9. Cramer et al. teaches the apparatus as taught above. It should be noted that Cramer et al. fails to specifically teach wherein the power source is a communication system power source. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the power source as recited in the claim because the particular of the power source are a mere design choice.

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Furthermore, the applicant has not disclosed why the particulars of the power source are of importance or solve a stated problem or provide an advantage over the prior art.

10. Claims 6, 16, 30, 39, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cramer et al. in view of Palti 6091974.

11. Cramer et al. teaches a method/apparatus for monitoring an oxygen partial pressure in an air mask of an oxygen system, comprising: generating a signal corresponding to the oxygen partial pressure in the air mask, the signal generated independently of the oxygen system; comparing the generated signal with a reference signal corresponding to a desired oxygen partial pressure; and vibrating a portion of the air mask if the generated signal is determined to be lower than the reference signal; detecting the oxygen partial pressure in the air mask; sounding an alarm if the generated signal is determined to be lower than the reference signal; amplifying the generated signal; and selectively shutting off the generated signal. It should be noted that Cramer et al. fails to specifically teach wherein the generated signal is an electric current, further comprising converting the electric current into a corresponding voltage.

12. Palti teaches that it is known for an electric current to be as a voltage (col. 3, lines 35-38). Therefore it would have been obvious to convert an electric current signal to a voltage for monitoring.

13. Claims 7, 8, 17, 18, 31, 40, 41, 50, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cramer et al. in view of Doron et al. 6239724.

14. Cramer et al. teaches a method/apparatus for monitoring an oxygen partial pressure in an air mask of an oxygen system, comprising: generating a signal

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corresponding to the oxygen partial pressure in the air mask, the signal generated independently of the oxygen system; comparing the generated signal with a reference signal corresponding to a desired oxygen partial pressure; and vibrating a portion of the air mask if the generated signal is determined to be lower than the reference signal; detecting the oxygen partial pressure in the air mask; sounding an alarm if the generated signal is determined to be lower than the reference signal; amplifying the generated signal; and selectively shutting off the generated signal. It should be noted that Cramer et al. fails to specifically teach wherein the generated signal is an analog signal, further comprising digitizing the analog signal into a digital signal having a predetermined number of bits.

15. Doron et al. teaches that it is known for an analog signal to be digitized into a digital signal for transferring information (col. 13, lines 24-32). Therefore it would have been obvious to analog to digital format for sending and recording information.

16. As to claims 8, 18, 41, and 51, Cramer/Doron teaches wherein the reference signal is stored in a memory unit, the comparing step comprising comparing the digitized generated signal with stored reference signal (col. 3, lines 31-41, '509).

17. Claims 10-12, 14, 15, 20-22, 43-45, 47, 48, and 52-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cramer et al. in view of Tripp, Jr. et al. H1039.

18. Cramer et al. teaches a method/apparatus for monitoring an oxygen partial pressure in an air mask of an oxygen system, comprising: a sensor; a comparator; a power source; a vibrator; an alarm; an amplifier; wherein the power source is a battery;

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a switch selectively capable of disconnecting the power source; wherein the sensor, comparator, and vibrator are integrated into a single unit. It should be noted that Cramer fails to teach a sensor mounted in an air mask.

19. Tripp, Jr. et al. teaches a common mask with sensors mounted in an air mask of monitoring a users physiological condition. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to mount the sensor of Cramer in a mask to for sensing informative parameters relating to the physiological well-being of a pilot or other persons (col. 12, lines 9-11).

20. Claims 23 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cramer et al. in view Tripp, Jr. et al. in further view of Wiesmann et al. 6199550.

21. Cramer/Tripp teach the method/apparatus as taught above. It should be noted that Cramer/Tripp fails teach wherein the air mask is configured to be fitted on a firefighter's helmet.

22. Weismann et al. teaches a common mask configured to be fitted on a firefighter's helmet (see fig. 1). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the mask to fit a firefighter's helmet to monitor the physiologic condition of the firefighter.

Claim Objections

23. Claim 9 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (703) 305-3285. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

MM
August 19, 2003



WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700